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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/832,587	04/11/2001	Silvia Allegro	33497	1497

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EXAMINER

JACOBSON, TONY M

ART UNIT	PAPER NUMBER
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2644

DATE MAILED: 01/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/832,587

Applicant(s)

ALLEGRO ET AL.

Examiner

Tony M Jacobson

Art Unit

2644

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 26 November 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.

Claim(s) objected to: none.

Claim(s) rejected: 1-3 and 5-30.

Claim(s) withdrawn from consideration: 4.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

Continuation of 2. NOTE: In view of the personal interview held 26 January 2005 between the examiner and Applicant's representative, Robert Bodi, the examiner wishes to clarify the record regarding the final rejection mailed on 11 August 2004. The new grounds of rejection of amended claim 1 (roughly equivalent to prior claim 4) was necessitated by Applicant's amendment primarily because amended claim 1 does not contain all the limitations that were present in prior claim 4. Most significantly, the prior claim 4 recited "wherein the characterization of the signal components (SS, NS) is performed by evaluating the features (M1 to Mj) determined in the signal analysis phase (I), employing a primitive-grouping method.", whereas amended claim 1 recites "wherein said characterization of the signal components are performed under utilization at least of auditory based features determined in the signal analysis phase, employing a primitive-grouping method." (the added portion being, "determined in the signal analysis phase, employing a primitive-grouping method"). The limitation of "evaluating" the features employing a primitive grouping method is omitted from amended claim 1. Thus, while the examiner concedes in the 35 USC 103(a) rejection of prior claim 4 in the first (non-final) Office action that "Lindemann et al. does not disclose that the characterization of the signal components is performed by evaluating the features determined in the signal analysis phase employing a primitive grouping method"; since the limitation "evaluating the features" is omitted from amended claim 1, the scope of the claim is broadened and examiner is caused to reject the new claim under 35 USC 102(b) as stated in the final rejection, since this limitation is no longer included. Accordingly, the finality of the Office action will be maintained.

Also, regrettably, although the examiner indicated in the first Office action that Applicant was required to amend the disclosure to include essential material that was incorporated by reference to non-patent publications, the examiner has since learned that Applicant's reference to the non-US patent material was not a proper incorporation by reference and therefore the addition of the referenced material to the disclosure constitutes new matter. (See MPEP 608.01(o)-(p) and 37 CFR 1.57(b), (g)(1).) Consequently, the amendment filed 14 May 2004 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. Applicant is required to cancel the new matter in the reply to this Advisory Action. The examiner apologizes for the confusion.



**SINH TRAN**  
**SUPERVISORY PATENT EXAMINER**